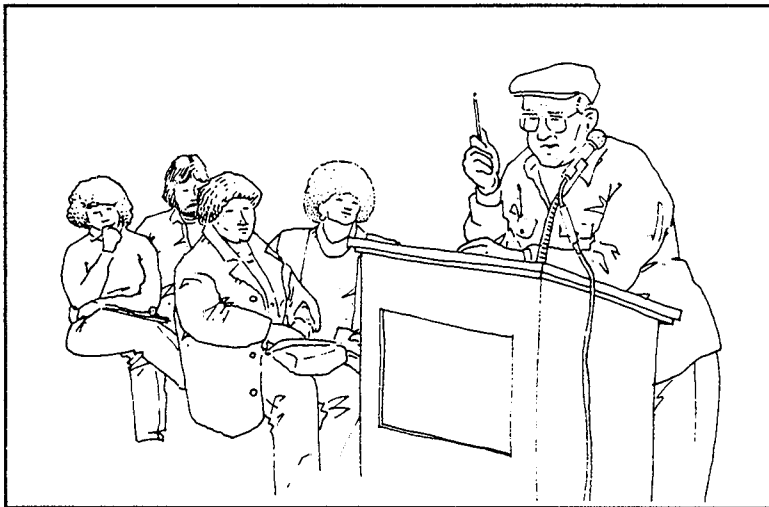
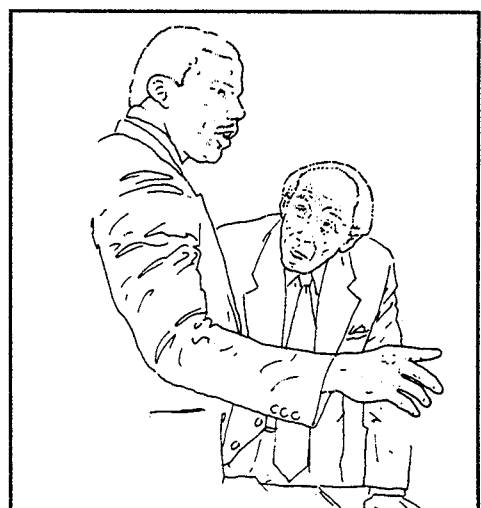
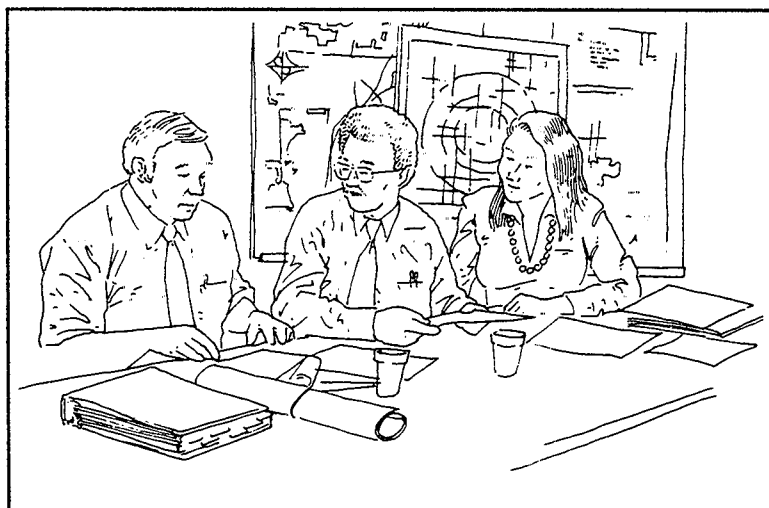
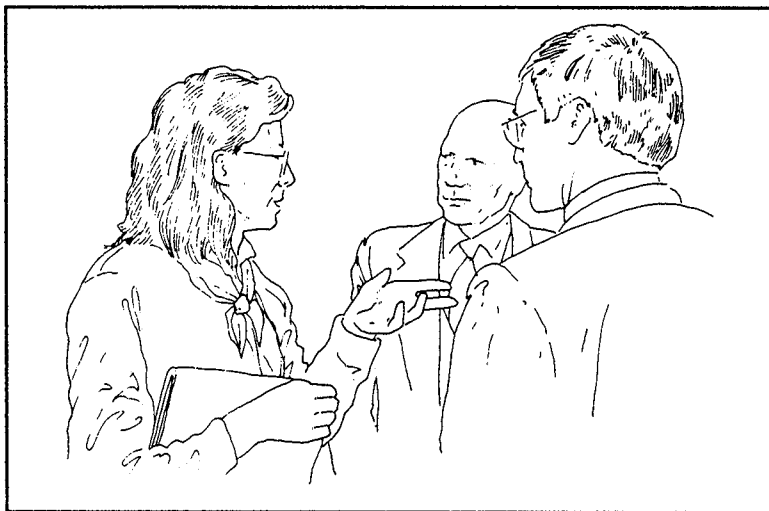


Hazardous Waste Siting Response



Action Guide for Michigan Citizens and Local Governments



Hazardous Waste Siting Response

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Alice Tomboulia

Resource Policy Services

Paul Tomboulia

Oakland University

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For additional information and references for citizens and local governments, contact:

- East Michigan Environmental Action Council (EMEAC), (248) 258-5188
- Waste Management Division, Department of Environmental Quality (DEQ), (517) 373-2730
- Environmental Assistance Center, Department of Environmental Quality, 1-800-662-9278

Acknowledgments

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East Michigan Environmental Action Council, 21220 West 14 Mile Road, Bloomfield Township, Michigan 48301
EMEAC is a citizens' organization working in the public interest for a healthy environment in Southeast Michigan.

How This Guide Can Help You

A proposal to construct a hazardous waste management facility in a community is almost always controversial. Michigan law defines a key role for local officials and citizens in responding to a hazardous waste siting proposal, through the Site Review Board process. If this role is understood and used effectively, local



people can obtain significant recognition of their concerns, and better protect public health and the environment in their community.

The purpose of this guide is to help local people carry out their public involvement role and to respond effectively to a siting proposal. The community's goals should include:

- Ensuring that the Site Review Board understands local concerns
- Gaining changes in facility design features and operating requirements to meet local concerns
- Providing information to help the SRB determine whether the proposal should be denied or approved
- Negotiating for compensation and incentives that will benefit the community if the proposal is approved

It is important for local citizens and officials to organize and to begin as early as possible to develop their responses. Even though "stopping the project" may sound like an appropriate local position, this guide is directed toward identifying more constructive problem-solving approaches.

Hazardous Waste Management in Michigan

• How is waste management controlled?

Management of commercial, industrial, and other hazardous waste in Michigan is governed by Part 111, Hazardous Waste Management, of the Michigan Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended.

This is a comprehensive law which covers statewide planning, the siting process, facility construction and operation, licensing of transporters, record keeping, and enforcement. The demands of the law are clear, and the penalties for violation are severe. A copy of Part 111 of Act 451 may be obtained from the Waste Management Division of the Michigan Department of Environmental Quality, (517) 373-2730. Part 111 of Act 451 and its rules are available on the Internet at www.deq.state.mi.us/wmd.

• What are hazardous wastes?

Hazardous wastes are discarded materials that can be harmful if not handled safely and carefully. Four types are defined in the law:

Corrosive wastes can dissolve metals or burn skin; they are strong acids or caustics, usually in liquid form.

Toxic wastes are poisonous; examples include pesticide residues, metal sludges, wastes from making plastics.

Ignitable wastes start burning easily, with flash points below 140 degrees F.; these include many solvents and thinners.

Reactive wastes are uncommon wastes that react rapidly to give off heat or gases; examples include oxidizers and cyanides.

Note: Radioactive wastes are covered by different laws, and could not be managed at a hazardous waste facility without a special permit.

• Where do hazardous wastes come from?

We use hazardous materials, including certain cleaners, paints, glues, weed killers, and bug sprays, in our homes. If the leftovers are thrown away, they become household hazardous wastes, which are exempt from the waste management law.

A much larger amount of hazardous waste is produced by businesses and industries, resulting from the hazardous materials used in their processes. For each person in Michigan, this totals about 200 pounds of commercial and industrial hazardous waste generated per year, all governed by Part 111 of Act 451.

Michigan businesses and industries, both large and small, generate many different kinds of hazardous wastes while producing the goods and services used by consumers as part of our lifestyle. Typical examples of hazardous wastes are:

Acids from making and cleaning steel for auto or truck engines and bodies

Metal sludges from steel making and plating of auto parts and metal products

Solvents from auto painting and repairs, making paint, printing, general manufacturing, dry cleaning, and laboratories

Hazardous wastes are often viewed with more concern than other chemical materials which are of critical importance to the community. Yet, in Michigan the total hazardous waste generated is a small fraction of the hazardous raw materials, fuels, and products which are transported and used in the state. Safe handling is required for all hazardous substances, including wastes.

• What is a hazardous waste management facility?

A hazardous waste management facility is a plant or location that is specially designed to handle hazardous waste from various industries. Waste is stored in tanks or containers, treated, incinerated, or landfilled. The hazardous waste law requires that facilities must be designed and operated to prevent leaks or spills, must be monitored, and must not endanger public health and safety.

• How do hazardous waste management facilities work?

Treatment facility: Makes the waste less hazardous or not hazardous. Treatment is usually done by chemical or biological methods in tanks or containers in an enclosed building; air emissions are controlled.

Incinerator: Burns the wastes in a specially designed furnace at high temperature to destroy them. The burner is an enclosed drum with controls on the burning and on gases given off.

Landfill: Waste is buried in an underground vault built to prevent leakage from bottom or sides. The site is securely fenced, environmental monitoring is required, and the waste is covered with a leakproof final cover.

• Are some waste management methods better than others?

Waste reduction and recycling, where possible, are preferable because they cut the amount of hazardous waste. Waste reduction through in-plant process changes can save money for the company producing the waste, but not all processes can be changed to avoid wastes. Recycling is possible with certain types of hazardous waste, mainly including solvents, metal solutions or sludges, and oils. Reducing consumer demand for the goods being produced is also a means of cutting waste generation.

Because it is not possible to totally avoid producing wastes, safe waste management facilities are needed. One choice may be the treatment of suitable wastes, in order to reduce the level of hazard or the amount of waste. Incineration may also be a good choice because it destroys the waste, but it is costly and emissions must be carefully controlled. Landfilling is the least desirable method because the waste remains indefinitely and there is a potential for leakage; however, in some cases there is no other option.

• What are the potential effects of facilities?

Positive effects on a community may include:

- Providing needed waste management for industries in the community
- Offering new employment at the waste management facility
- Increased property tax revenues, compared to vacant or abandoned property
- Conversion or cleanup of an old industrial or waste management site
- Compensation and incentives that may be provided by the facility owner

Negative effects on a community may include:

- Uncertainties about impacts of a facility on air, water, or groundwater quality
- Concern about safety or about risk of accidents
- Undesirable impacts from traffic, noise, odors
- Economic impacts on emergency service costs or nearby property values
- Social impacts on community planning, self-image, and appearance

Summary of the Michigan Siting Process

• What is the Site Review Board process?

This is Michigan's three-phase process for deciding whether or not a proposed hazardous waste management facility should be built. In the first phase, the law requires the Michigan Department of Environmental Quality (DEQ) to review a facility proposal for its compliance with the technical requirements of Part III of Act 451 and other state regulations.



In the second phase, the law requires a 10-person Site Review Board (SRB) to review the facility proposal and recommend changes in response to concerns about community impact and other matters. The SRB studies the facility proposal and holds a public hearing and other meetings to obtain information from the public and from experts. The SRB is authorized to conduct both formal and informal hearings. During formal hearings the Board may receive sworn testimony, cross-examine witnesses, and request additional

experts as needed. The SRB also oversees formal negotiations between selected community representatives and the applicant proposing the facility. A Site Review Board must make its recommendation to the Department of Environmental Quality within six months of its first meeting.

In the third phase, the final decision about building a proposed facility is made by the DEQ. The Department will not approve the construction of a new facility without considering the recommendations of the Site Review Board.

• Who are the Site Review Board members?

The Site Review Board (SRB) appointed to review a particular proposal represents both local and state concerns. The municipality and the county where the facility is proposed each appoint one member to the SRB. The Governor appoints a non-voting chairperson and seven voting members as follows: two public representatives, a municipal representative, a manufacturing industry representative, a geologist, a chemical engineer, and a toxicologist. Staff for the SRB is provided by the Michigan Department of Environmental Quality (DEQ). The SRB members are listed in Table 1 on page 6.

• Why is a facility proposed for any specific site?

A site is selected by a company or agency desiring to build a facility. The applicant, usually private industry, selects a particular site based on market studies and other business and environmental information. Sites are not selected by the Michigan Department of Environmental Quality or the Site Review Board.

Table 1: Site Review Board Members

Permanent Members

1. **Non-Voting Chairperson** - Must be an attorney experienced in conducting formal meetings where sworn testimony is given.
2. **Geologist** - Must be on the faculty of an institution of higher education within the state.
3. **Chemical Engineer** - Must be on the faculty of an institution of higher education within the state.
4. **Toxicologist** - Must be on the faculty of an institution of higher education within the state.
5. **Representative from a Manufacturing Industry**
6. **Representative of the Public**
7. **Representative of the Public**
8. **Representative of a Municipality** - Must be associated with the same type of municipality or municipal association as the type of municipality (i.e., township, village, city) in which the facility is proposed to be located.

Local Members

9. **Representative of Municipality in which the Facility is Proposed to be Located** - To be appointed by governing body of that municipality. There is no residence requirement for this person.
10. **Representative of County in which the Facility is Proposed to be Located** - To be appointed by the County Board of Commissioners. Person must reside in that county.

Members 1 through 8 are appointed by the Governor with the advice and consent of the Senate to serve on Site Review Boards for 3-year terms. They may be appointed for additional 3-year terms or may serve as long as necessary beyond a term to complete action on construction permit applications pending at the expiration of a term. The Governor may appoint a pool of individuals for each permanent member position. DEQ then selects one individual at random from each pool to serve on a given Site Review Board.

Members 6, 7 and 8 shall not serve on a Site Review Board that is evaluating an application for a facility within a county or municipality which directly employs the member or in which the member resides.

Members 9 and 10 are appointed by the localities directly involved in a facility application. These members will serve on a Site Review Board until the particular construction permit application subject to their review is either approved or rejected.

*Adapted from Michigan's Hazardous Waste Facility Siting Process,
As Revised, Metropolitan Affairs Corporation, 1988*

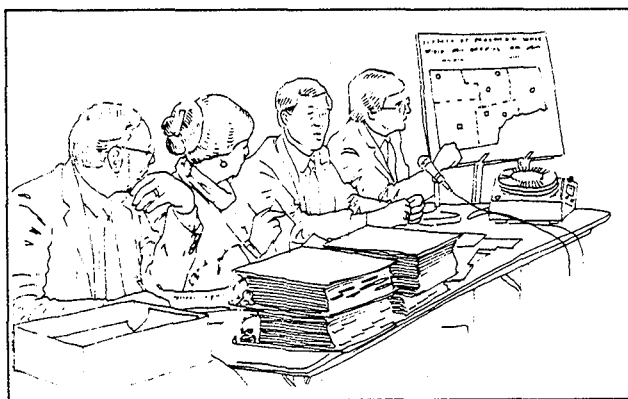
• How is the Department of Environmental Quality involved?

A proposal for a facility is first submitted to the Michigan Department of Environmental Quality (DEQ). The application often contains several notebooks of information, which the DEQ reviews for completeness. The DEQ then determines whether the completed application meets the technical requirements of the law for the facility's construction and operation, and for environmental and health protection. The DEQ is required by law to review the technical and environmental features of the proposal, but may not address all potential community impacts.

The DEQ holds a public hearing, and may ask the applicant to make changes in the proposal to mitigate negative effects on the environment. Within 120 days (4 months) of receiving a complete application, the DEQ must decide whether to reject it or refer it to the SRB for further review. If the application is rejected by the DEQ on technical merits, there is no further consideration. If the application is technically adequate, a Site Review Board process is started. The DEQ prepares a draft construction permit for the SRB to consider, containing many conditions to regulate the facility if it is approved.

• What decisions have Site Review Boards made?

Since 1979, seven facility proposals have been acted on by Site Review Boards in Michigan. The SRB decisions are summarized in Table 2 on page 8. Four proposals have been approved, including two treatment facilities, an incinerator, and a landfill. Three proposals in Michigan have been turned down, including a landfill, an incinerator, and a treatment facility. Michigan facilities operating before 1979 did not go through the SRB process, but they must meet design and operating requirements of the law.



The SRB can recommend that the DEQ reject a proposed facility because of specific shortcomings in the plans that were not caught by the DEQ, or because of community impacts deemed to be unacceptable. The actions of previous SRBs were all taken before 1991, when changes to the law shifted the final decision-making authority to the DEQ. As of 1998, the DEQ has not made any decisions on whether to issue construction permits under this new authority.

If the SRB recommends rejection of a proposal, it must state its reasons in writing. Each of the three denial letters in Michigan has contained a number of reasons, which have included: effects on groundwater, hydrogeology, or flooding; poor past performance or lack of expertise by applicant; conflict with local planning and zoning; unproven technology; and insufficient information on need for the facility.

Table 2: Michigan's Site Review Board Decisions

Facility Proposal	Dates	Voting Records	Grant	Deny
Dow Chemical Company, USA	5/15/81	Permanent Members	4	1
Landfill in	to	Local Members	2	2
City of Midland	9/8/81			
<i>Permit approved</i>		Total	6	3
BFC Incorporated	7/29/81	Permanent Members	4	0
Incinerator in	to	Local Members	2	0
City of Muskegon	11/4/81			
<i>Permit approved</i>		Total	6	0
City Sand and Landfill	6/23/82	Permanent Members	3	2
Landfill in	to	Local Members	0	4
Sumpter Township	10/20/83			
<i>Permit denied</i>		Total	3	6
ERES Corporation	9/9/82	Permanent Members	1	3
Incinerator in	to	Local Members	0	4
Pontiac Township*	12/15/82			
<i>Permit denied</i>		Total	1	7
Stablex Corporation	12/7/82	Permanent Members	2	2
Stabilization/Treatment Facility	to	Local Members	0	3
in Groveland Township	10/11/83			
<i>Permit denied</i>		Total	2	5
National Chemical Services**	12/16/87	Permanent Members	5	0
Treatment Facility in	to	Local Members	2	1
Southwest Detroit	5/5/88			
<i>Permit approved</i>		Total	7	1
City Environmental, Inc.	2/23/89	Permanent Members	6	1
Treatment Facility in	to	Local Members	2	0
East Central Detroit	9/13/89			
<i>Permit approved</i>		Total	8	1

***Now Auburn Hills**

****Later Meridian Environmental Services**

*Adapted from Michigan's Hazardous Waste Facility Siting Process,
As Revised, Metropolitan Affairs Corporation, 1988*

Understanding the Role of the Public

• How should the community respond?

Citizens and local government working together as an organized group will greatly improve the results for the community. It is important to begin just as soon as possible, since definite time limits are set by law for the steps in the siting process, as shown below in a simplified time line for Part 111 of Act 451.

A detailed time line for the review process is on page 24.

Simplified Time Line for Review

Day	
-30	Applicant publishes public notice
0	Applicant submits application to DEQ
60	DEQ holds public hearing
120	DEQ rejects application <i>or</i> DEQ starts SRB process
150	SRB holds informational meeting
195	SRB holds public hearing
210	Formal negotiations can start, after SRB lists issues
300	Negotiation process ends
330	SRB makes recommendations to DEQ (180 days after first meeting)

Suggested community responses are briefly listed below. For more details and a checklist of recommended community actions, see pages 17 to 22.

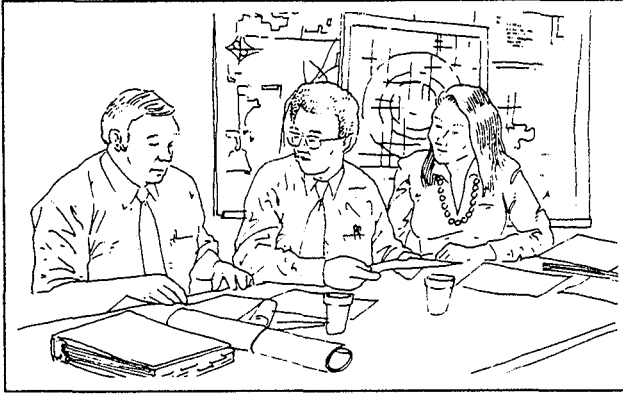
- Form a coalition of community groups and government; select spokespersons.
- Study the proposal (copies will be in public locations); ask questions of DEQ staff; get expert advice and seek assistance.
- Develop a list of specific concerns about impacts on the community.
- Inform citizens and groups about important concerns and public meetings; contact newspapers.
- Give specific, well-informed, written statements at SRB meetings; plan the presentations in advance.
- Choose a representative who can be empowered to negotiate on behalf of the community coalition.

• What role does local government have in the process?

- Local government officials should be encouraged to be part of the community response working group.
- The governments of the municipality and the county where the facility is proposed will each be notified by the DEQ to appoint a Site Review Board member to represent local concerns on the Board.
- The local government should inform the DEQ and the SRB about local ordinances or regulations on planning, construction, or operation of industrial or waste management facilities.
- The SRB will ask the municipality and county to send representatives to any formal negotiations.

• Can the community keep out a proposed facility?

Only through denial by the DEQ, either during its technical review or after the SRB process, can a facility be stopped. If the DEQ and the SRB find the proposal acceptable, usually with changes, then the applicant has the right to build and operate the facility within the permit requirements.



The DEQ and the SRB must each hold a public hearing, during their separate phases of review. Citizen groups should state their concerns at the hearings, after becoming informed about the proposal. If you state opposition, it is important to give reasons why the proposal should be denied, and to show possible negative effects.

Even though the law states that local regulations may not prohibit a facility, local ordinance requirements can be included in a facility permit to

control design and operating features that are important to the community. Conflicts between ordinance requirements and features of the proposed facility should be resolved by making changes in the proposal at an early stage.

• Can a proposal be changed?

At the public hearing and other meetings of the SRB, citizens should tell the Board their concerns about a proposed facility, so that changes can be made. The SRB knows that hazardous waste facilities are unpopular, so it is not a good use of time to simply say that you are opposed. It is very helpful to the Board if the citizens can suggest specific changes related to their concerns. The types of changes usually required by the SRB are **mitigation** of negative effects or **compensation** for costs to the community. Examples are listed below.

• How can negative effects be avoided or reduced?

☐ **Mitigation** is a change in the physical design or the operation of the facility, to avoid negative environmental effects. Site Review Boards have frequently added mitigation measures to the draft construction permit. Examples include:

- Improve air and water pollution control devices
- Decrease size of facility; buy more buffer land
- Screen with plantings; place warning signs on fence
- Change operating hours or waste hauling routes
- Restrict types of wastes allowed or their places of origin

- ☐ **Compensation** is repayment by the facility owner for costs to the community that cannot be avoided by mitigation. Compensation is a way to charge the community's costs back to the generators of hazardous waste, so that citizens are not penalized for living in a community that provides a waste management facility. Examples are:

- Pave roads, provide community emergency equipment or training
- Make one-time payments to community; pay ongoing fees (tipping fees) to community based on amount of waste
- Train and pay an inspector hired by community
- Guarantee purchase of adjacent properties

Neighbors often seek compensation in the form of payment for loss of property sale value if a facility is built. However, the procedure for proving such a loss in sale value is demanding. It may be more productive to seek a guaranteed property purchase by the facility developer at a price agreed in advance, should the neighbors wish to sell.

- ☐ **Incentives** are extra benefits offered by the facility owner or negotiated by the community. Examples are:

- Make a donation for a public park, or to charities or schools
- Sponsor a local environmental or economic improvement group
- Provide free waste disposal for local residents

Making the Siting Process Work for You

• Use the Site Review Board's authority to make changes

Part 111 of Act 451 requires the SRB to consider local ordinances and regulations, the concerns and objections of the public, and the impact of a proposed facility on the community. The law also requires the SRB to recommend changes to mitigate concerns and objections, and to incorporate the local ordinances and regulations into the facility proposal to the extent possible. These changes are made by means of stipulations added to the draft construction permit.

The community should be prepared to make the most of these required actions. At the public hearing and other meetings of the SRB, citizens should tell the Board their concerns about a proposed facility, along with factual information. They should insist that the SRB develop the required permit stipulations to address their concerns. Prioritizing issues is helpful in presenting local concerns to the SRB, since the Board has only limited time. If the public uses a "scattergun" approach and brings random or inappropriate issues to the SRB, then there will not be enough time to address the more significant issues.

It is very helpful to the Board if the citizens can suggest specific changes related to their concerns. Examples of actual permit stipulations responding to local concerns are given in Table 3 on pages 12 and 13.

Table 3: Permit Stipulations and Local Concerns

Each of the following construction permit stipulations represents a response to a concern of the local community, summarized from stipulations used by Site Review Boards to provide mitigation and compensation. Exact wording can be obtained from the DEQ Waste Management Division.

Mitigation

*A change in the physical design or operation of the facility
to avoid negative environmental effects*

1. **To integrate provisions of local regulations**, permittee shall comply with all local ordinances, except any that would prohibit construction or operation. (NCS)
2. **To assure environmental compliance by facility subcontractors and clients**, permittee shall require by contract that subcontractors and clients comply with all pertinent laws, rules, and regulations. (CEI)
3. **To discourage accidental entry by nearby residents or passersby**, warning signs meeting designated standards shall be prominently displayed at each access point to the landfill. Similar signs shall be placed at other locations along the fence line in sufficient numbers to be seen from any approach. (Dow)
4. **To assure visual screening from the neighborhood**, permittee shall install earthen berms and plant trees according to an approved plan. (NCS)
5. **To prevent traffic conflicts with school buses and avoid hazardous traffic conditions**, permittee shall not accept wastes at the facility between the hours of 3 and 5 p.m. or during weather conducive to hazardous driving conditions. (Dow)
6. **To avoid noise, danger, and odor of truck traffic**, permittee shall require trucks to approach or leave only over the designated route and to turn off any diesel engine within 10 minutes of arrival. (NCS)
7. **To provide a responsible person in case of emergency**, permittee will have available at all times at least one employee responsible for coordinating all emergency response measures and authorized to commit the needed resources. (Dow)
8. **To provide monitoring of air quality in the vicinity of nearby residences**, permittee shall conduct an ambient air monitoring program to detect contamination by hazardous wastes originating from the landfill. The monitor shall be operational prior to placing any hazardous waste in the landfill and shall be sampled on a six-day schedule. (Dow)

Table 3 continued

9. **To improve environmental protection of air and water**, permittee shall meet additional specific scrubber stack discharge limits and shall comply with any additional pre-treatment standards for sewer system discharges imposed by the municipal wastewater treatment plant. (CEI)
10. **To verify clean closure of the site**, permittee shall monitor groundwater quality during and after closure. (NCS)

Compensation

*Repayment by the facility owner for costs to the community
that cannot be avoided by mitigation*

1. **To include provisions of an informal negotiation agreement**, the submitted agreement is incorporated into and made an enforceable part of the permit. (NCS) (The negotiated agreement contained a number of **compensation and incentive provisions**. See Table 4 for the provisions of informal negotiation agreements.)
2. **To provide training of local fire and police departments**, permittee shall provide training in handling hazardous waste emergencies to the local police and fire departments. Training shall include an annual comprehensive overview of potential hazardous waste emergencies and the appropriate countermeasures, with more frequent updates as deemed necessary. (City Sand - proposed)
3. **To assure prompt and competent spill cleanup**, permittee shall have trained staff available to assist in cleanup of any spills from trucks en route to or leaving the facility. (NCS)
4. **To identify changes in domestic well water quality over time**, permittee shall, in addition to the groundwater monitoring system, conduct a monitoring program of residential wells for the purpose of obtaining background water quality information and identifying changes in water quality over time. (Dow)
5. **To provide for an alternate water supply**, permittee shall be ordered to immediately provide an alternate source of safe drinking water, if it is determined that human health may be threatened by actual or potential contamination of certain water supplies caused by the hazardous waste landfill. (Dow)

• **Don't let a negative position prevent a response program**

A negative position about a proposed hazardous waste management facility is an understandable response from a community. The local concerns are expressions of a desire to protect the community's self-interest.

The ability to demand consideration and special stipulations from the SRB is the real power given to the community by Part 111 of Act 451. Due to strong local feelings of opposition, some local governments and citizens' groups may feel reluctant to become organized and initiate a response program. They may view any participation as an acknowledgement and acceptance of the proposal. But since the community does not have veto power, such reluctance does not protect the community's interests; it only forfeits preparation for seeking SRB actions.

Communicating and bargaining directly with the applicant at any stage of the review process can be very effective. If a community has taken a strong adversarial position with an applicant in public, it may not be eager to negotiate the terms of a settlement because of its fear that such an agreement would signal the acceptance of the facility. Community representatives may want to publicly clarify that their actions do not signify acceptance of the proposal.

• **Use opportunities for informal negotiation**

Among other purposes, the SRB meetings can provide an informal forum for working out compromises between the applicant and the community. Informal discussion-type negotiations during the public meetings can solve problems raised by the public or by SRB members. There are many opportunities for creative problem-solving and developing novel stipulations through negotiation.

The SRB members should take an active role in proposing new or alternative solutions to local concerns. The Board is not restricted to selecting among the suggestions made by the DEQ staff or other technical experts. Solutions may also be suggested by Board members, the applicant, the local government, or citizens. Permit stipulations are then written by DEQ staff to express the agreements that have been reached through informal discussions.

Sometimes solutions to concerns may be developed through informal negotiations between community members and the applicant, conducted outside the SRB meetings. Michigan SRB's have held that any matters related to monetary payments, property value guarantees, or contributions to the community should be negotiated directly between the applicant and the community. Informal negotiation agreements have been adopted as permit stipulations by the SRB in two actual permits. The agreements, which are summarized in Table 4, include examples of mitigation, compensation, and incentives. See pages 10 and 11 for a discussion of these terms.

Table 4: Informal Negotiation Agreements

Agreement 1

Permittee agreed to undertake the commitments summarized below, prior to or during the the operation of the treatment facility, in return for the imposition of no further restrictions by the SRB on the hours of operation of the facility.

- Form an Environmental Relations Committee (ERC) to review the operation of the facility
- Forward air monitoring information to each member of the ERC
- Hire 60% of all operations employees from among neighborhood residents, and give them job training
- Annually fund a college scholarship to a neighborhood high school graduate
- Provide funds for rehabilitation or purchase of a neighborhood park chosen by the ERC
- Annually provide supplementary funds for science education at a neighborhood school
- Provide matching funds for structural rehabilitation of qualifying homes within one-half mile of the facility
- Provide for purchase of equipment for volunteer neighborhood security program
- Install facility landscaping to consist of berms and tree plantings
- Offer monthly educational seminars for residents during construction and operation
- Sponsor an annual open house for neighboring residents
- Host meetings of the ERC to assist residents in enforcing environmental controls in the local community

Agreement 2

Permittee agreed to implement the following commitments after the start of actual operation of the treatment facility.

- Form a Community Relations Committee (CRC) to provide information to the community about the facility, resolve community questions and concerns, and review environmental monitoring data
- Help develop an environmental education program and provide media equipment at two neighborhood schools
- Meet a hiring goal of 50% local residents, and provide training for job skills and advancement
- Enhance local volunteer neighborhood security program, provide additional patrol service
- Notify all waste haulers of the truck route outlined in the permit application, and demand compliance
- Hold monthly educational meetings to provide status reports and related information during construction of the facility
- Install berms with landscaping consisting of perennials, shrubs, and trees

• Be prepared for the formal negotiation process

Part 111 of Act 451 allows for a formal negotiation process between the applicant and the affected parties named by the SRB. Only one siting case has been initiated since this provision was added to the law; the formal negotiation process was not used in that case. Instead, the SRB addressed a list of identified issues through its decisions at public meetings. An informal negotiation agreement was developed by the applicant and community groups to cover additional matters.



According to the description of the negotiation process in the law, after the public hearing the SRB will list the issues raised, and select those to be evaluated by the Board and those to be addressed through a formal negotiation process. By law the affected parties participating in the formal negotiation process must include the local government and the county. At the discretion of the SRB, other citizen, business, or environmental groups may be named as affected parties. If requested by the applicant or an affected party, a mediator will be appointed by the SRB. The negotiations will proceed concurrently with the SRB's review process, and must be completed within 90 days after starting. The SRB may approve a time extension of not more than 60 days for the negotiations, if jointly requested by the applicant and one or more affected party.

Since it is possible that the facility will be built, the community should view the formal negotiations as a way to gain maximum benefits. The community and local government representatives should list the mitigation, compensation, and incentives they are seeking. The terms of the negotiation agreement will usually be entered as permit stipulations by the SRB, except that the environmental and technical standards of Act 451, Part 111 may not be lowered: For each negotiation issue which has not reached a negotiated settlement, the Board will select between the final best offers presented by the applicant and the affected parties.

Checklist of Citizen and Government Actions

• How should your community get started?

☐ **Form a Citizens' Information Committee (CIC).**

Forming an organization of citizens is important for focusing community activities and making efficient use of human and financial resources. A group could be appointed by the local or county government, or formed independently by citizens located close to the proposed facility. The group might be called a Citizens' Information Committee (CIC), as used here, or another name.

- The CIC should review the proposal, address local concerns, and assure that credible information is available to the public.
- The CIC should start as soon as possible to hold meetings, develop a plan based on the activities in this Checklist, and carry out the plan.

☐ **Encourage citizen and government cooperation.**

- Citizens and local government should work together to maximize community effectiveness.
- Citizens should state issues that the local government might overlook, and develop information that the government could not provide.
- The government's funding, staffing, and local regulations can be part of the cooperative program.
- Citizens should make sure that their local government will represent their views in presentations to the SRB.

☐ **Learn about hazardous waste management.**

While the subject of hazardous waste management is complex and often technical, the CIC and local government officials should learn as much as time allows, so as to better understand the proposal and the alternatives.

- Ask the Waste Management Division of DEQ for copies of Act 451, Part 111 and reports on hazardous waste generation and management in Michigan.
- Learn about hazardous waste management in general; consult libraries and environmental organizations for references; review slide shows, if available.
- Study state-of-the-art technologies; arrange tours of modern facilities.

☐ **Start actions before the SRB convenes.**

Groups which start late or proceed slowly will not have enough time to finish their desired activities. Community responses can start during the 120 days of DEQ review, or earlier. The applicant must publish a notice of intent at least 30 days before submitting the application to the DEQ, providing extra time for the community to become informed and prepared.

- Conduct as many community actions as possible before the SRB convenes.
- Encourage an early information exchange while a future applicant is selecting a site and preparing to apply, so that plans can be adapted to local requirements.
- Local government officials should be willing to talk with a prospective applicant who asks about site selection, alternative sites, or local regulations.

❑ Work within the Act 64 time line.

Once a construction permit application has been received by DEQ, the progress of time becomes a “clock” which cannot be stopped or turned back. However, DEQ has agreed to temporarily suspend review at the applicant’s request, but only to let the applicant resolve technical issues before referral to the SRB. The legal time limits are shown on pages 9 and 24.

- Develop a clear plan and schedule; organize within the framework of legal time limits set by Part 111 of Act 451.
- Budget time to give fullest attention to the key concerns of greatest impact.
- Preparing and enacting ordinances may have an exacting schedule, with time limits for notice, hearings, and publication.
- Estimate and schedule the time needed to announce and hold meetings, prepare reports, and hire consultants.

❑ Strengthen local government planning.

Communities in or near to industrialized areas should expect hazardous waste facility siting proposals, and plan to take a leadership role in siting instead of a reactive one. An SRB must consider consistency with local planning.

- A local master land use plan should include policy statements on the siting of hazardous waste management facilities. The policies may not ban such facilities, since the law does not allow local prohibition.
- Planning policies may state the conditions on and surrounding a proposed site which would make it acceptable or unacceptable, in order to direct site selection.

❑ Upgrade local ordinances.

One of the responsibilities of the SRB is to integrate by stipulation the provisions of local ordinances or regulations, to the fullest extent practicable.

- As early as possible, a local government should review and upgrade all ordinances and regulations affecting hazardous waste management facilities.
- Remember that the intent or effect of any ordinance, including zoning, must not be to prohibit the construction or operation of a facility.

Local Ordinances Affecting Hazardous Waste Facilities

Zoning provisions affecting industrial or commercial facilities, including:

- Performance standards for limiting noise, odor, dust, vibration, and the like
- Requirements for facility ingress and egress, and off-street parking
- Design standards for landscaping, exterior lighting, and business signs
- Requirements for setbacks, buffer zones, and screening
- Regulations on hours of operation
- Requirements for controlled access and warning signs
- Specific design requirements for types of waste management facilities

Construction codes, including building, plumbing, electrical and others

Other ordinances, including: grading and paving; water and sewer; wet-land protection; stormwater management or drainage; fire or traffic control

• What are the important early actions?

☐ **Analyze the application materials and visit the site.**

- Study copies of the construction permit application and related documents. Ask DEQ Waste Management Division where public copies of the application are located. The applicant might provide a copy for community review.
- Require review of the application by all local government departments or consultants with planning, environmental, or construction responsibilities.
- Develop a municipal report on the review and findings, to guide further action.
- Arrange a tour for CIC members and local government officials to the site of the proposed facility. Ask the DEQ or the applicant to make arrangements.
- Begin to develop a list of concerns and seek community agreement on specific responses desired from the SRB.
- Contact DEQ staff regularly to keep up-to-date on the status of the application and the review. Request to be on mailing lists for future documents and letters.

☐ **Seek assistance from many sources.**

- Identify and use local citizen experts in dealing with technical matters.
- The CIC should ask local government personnel and technical advisors to help analyze all the issues in a proposal.
- Request relevant data from county departments with environmental responsibilities (planning, drains, environmental health, public works).
- Seek assistance from statewide or regional environmental groups or from citizens in other areas where facilities have been proposed.
- Consider hiring a special consultant to work with the CIC or local government, specifying what needs to be done and what it will cost.

☐ **Review applicant's environmental compliance disclosure.**

A disclosure statement by applicants is required, including information on convictions for criminal violations of environmental laws, permanently revoked environmental permits or licenses, and environmental threats at any sites which required public funds for cleanup. The DEQ may deny a hazardous waste management facility application based on the disclosed information.

- Review the contents of the disclosure statement, which is part of the application materials, and respond if appropriate.

☐ **Comment at the public hearing held by DEQ.**

Within 60 days of receiving a complete construction permit application, the DEQ must hold a public hearing as part of its technical review. After this, the DEQ may require the applicant to make changes in the proposal to address technical difficulties in the proposal, as identified by the public.

- Be ready to present the community's concerns and ordinances at the DEQ's public hearing, for consideration by technical review staff.
- Show the DEQ any conflicts between local ordinances and the facility proposal, so that early changes in the proposal may be made to resolve conflicts.

❑ Determine zone of impact of proposed facility.

One of the most important tasks in analyzing a proposed facility is to determine the realistic zone of community impact. Within several hundred feet of a facility, people will have obvious concerns. However, effects would probably be negligible at a distance of several miles.

- Focus community analysis within a reasonable radius of impact.
- Don't waste time and resources on negligible effects at great distances.
- Seek competent advice in determining the zone of impact; a technical consultant or a DEQ staff member may be helpful.

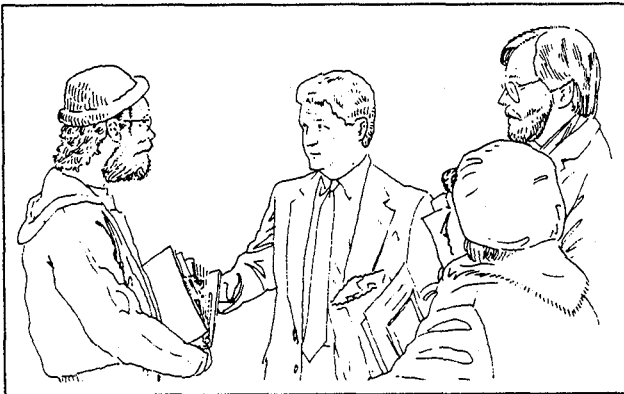
❑ Communicate with the public.

Communications should be focused on residents and groups within the expected zone of impact of the facility. The goals are to encourage responsible dialogue between all parties, to help people understand the proposal and the role of the community, and to seek useful comments and questions.

- The CIC or local government should communicate with local leaders such as members of school boards, service clubs, churches, and environmental groups.
- Prepare regular brief reports or newsletters about community response activities, for the public and the media.
- Invite all interested parties to participate in meetings; announce in newspaper articles or ads, and send letters to residents within the zone of impact.

❑ Comment on other required permits.

For a proposed hazardous waste facility, the Waste Management Division of the DEQ will know which other permits are required, such as air quality, surface water discharge, wetland, or sewer permits.



- Ask the DEQ about file information on other required permits under review; selected copies can be provided for your group, with a copy fee.
- Develop questions or comments; for instance, questions about the adequacy of proposed air quality monitoring, or the effect of proposed wetland changes.
- Direct early responses to the DEQ permit review staff and offer questions and comments at any public hearings on required permits.

❑ Local and county governments appoint SRB members.

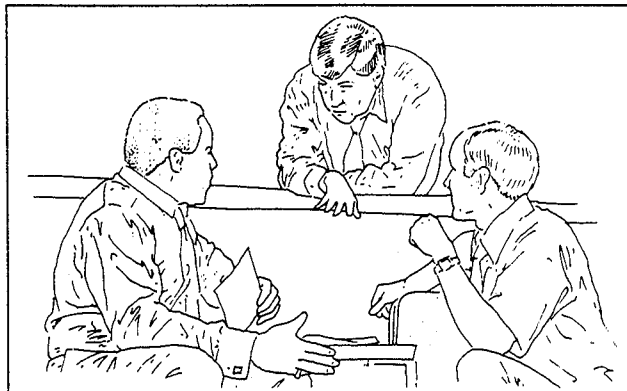
The local and county SRB members provide important perspectives and information about the possible community impacts. No later than the 75th day of its review, if the DEQ has not rejected the application, it must notify the local government and the county and request their SRB appointments within 45 days.

- Each appointing body should make a careful selection, weighing the benefits and risks of various possible appointments.
- Potential SRB appointees should: be able to make independent objective decisions; know the findings of the CIC; understand the local community; be able to understand technical information; have time for meetings and study.

• How should Site Review Board meetings be used?

☐ Review the draft construction permit.

The draft permit, which may incorporate modifications recommended by the SRB, is the document which will become the actual construction permit if the facility is approved. The draft permit will be available from the DEQ Waste Management Division early in the SRB proceedings. It will contain general conditions applicable to all similar facilities, and also an important section listing specific conditions for the proposed facility.



These conditions or stipulations typically cover: compliance with Part 111 of Act 451; personnel; proper operation and maintenance; monitoring; records; inspection and entry; reporting requirements; closure care; and wastes to be managed.

- Study and respond to the draft construction permit developed by the DEQ staff.
- During the SRB proceedings, work to have the draft permit modified and augmented in response to issues raised.

☐ Present community concerns to the SRB.

- Make formal presentations at the SRB's public hearing. Also there will usually be public participation segments at later SRB meetings.
- Invite a variety of well-informed local citizens and government officials to present concise and carefully prepared statements. Consider inviting statements by technical specialists or consultants who are familiar with the application.
- Don't expect that uninformed outsiders or outspoken demagogues will impress the SRB members.
- Make presentations that provide SRB members with clear reasons and documentation if possible. Avoid generalities such as "We don't want it here."
- Present key issues first and make sure that more time is allocated to the more important issues.
- Enter everything into the record; written comments to the SRB are preferred.
- Don't expect any significant responses or negotiation at the initial public hearing; the SRB will conduct most of its business at later work sessions.

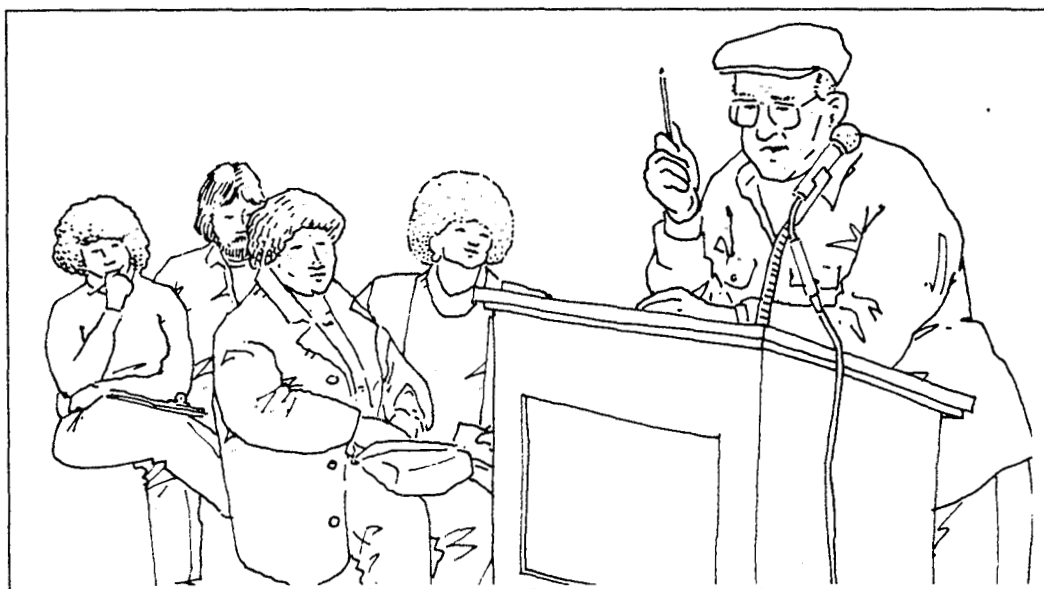
☐ Pursue concerns and obtain SRB response.

- Sample permit stipulations are provided in Table 3 on pages 12 and 13.
- The community should press to have all of its concerns about facility design and operation addressed by the SRB during its proceedings.
- The community's concerns should include compliance during construction; for instance, a permit stipulation could be sought requiring the applicant to provide construction inspection reports to the local government or the CIC.

☐ **Insist on recognition of local ordinances.**

It is important to cover local ordinances early in the SRB process, so that any necessary changes in the facility proposal can be identified. Integrating local ordinance provisions as stipulations in a construction permit is the way to make them effective for regulating a hazardous waste management facility.

- The local government should present relevant ordinances and regulations to the SRB and insist that they be integrated as permit stipulations as fully as possible.
- Stipulations authorizing the local construction codes should be obtained; thereby, local inspections can be required for building components, heating and cooling, electrical, plumbing, and other systems during construction.



☐ **Take part in informal and formal negotiations.**

Many of the community's concerns may be mitigated or compensated through SRB actions, but informal and formal negotiations can address additional concerns. The community should view a negotiation process as a chance to obtain significant advantages in case the SRB approves the construction of the facility. For instance, the applicant may donate a park to the community (an incentive) or may guarantee the property value of homes near the proposed facility (compensation). The SRB will list issues to be addressed in the formal negotiation process under Part 111 of Act 451, and will name the affected parties to participate.

- The community may informally negotiate with the applicant to obtain solutions to various local concerns, separately from the formal negotiations or the SRB.
- Community groups should cooperate to identify a single person to speak for a coalition of groups in both informal and formal negotiations.
- Stay in close communication with the members negotiating on behalf of the community, and maintain a strong but flexible negotiating strategy.
- The affected parties participating in the formal negotiations should be prepared to make a final best offer on issues which have not reached a settlement.

• Key Terms

Act 451, Part 111: the Hazardous Waste Management part of the Michigan Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, and its amendments (formerly Act 64 of the Public Acts of 1979)

CIC: Citizens Information Committee, an optional local committee or group which can communicate information and concerns about a particular facility

DEQ: (Michigan) Department of Environmental Quality, the department of state government responsible for regulating hazardous waste management

local (municipal) government: a governing body of a township, charter township, village, or city

mediation: a form of negotiation in which a third party conducts discussions or confers in order to come to terms or reach an agreement

mitigate: to lessen or moderate the predicted negative effects of a particular condition or activity

negotiation: a process of conferring or discussing in order to come to terms or reach an agreement

permit: a document granting permission to conduct a specified activity according to stated conditions, obtained from a governmental agency with permitting authority under law or ordinance

SRB: Site Review Board, established under Act 451, Part 111 to make a recommendation on whether to approve or reject an application for a permit to construct a hazardous waste management facility; prior to April 1, 1983, this Board was named the Site Approval Board

stipulation: a special requirement which is included as a condition for the issuance of a permit

• About the Authors

Alice Tomboulia is an environmental policy consultant and former member of the State Legislature, where she sponsored Act 64 of the Public Acts of 1979, the Michigan Hazardous Waste Management Act (later renamed as Part 111 of Act 451, Public Acts of 1994).

Paul Tomboulia is a professor and former chair of the Chemistry Department, and also Director of Environmental Health Programs at Oakland University. He was a member of a Citizens' Information Committee and a Hazardous Waste Site Approval Board considering an Act 64 application.

• Previous Publications

Some of the material in this document was drawn from two previous publications:

Alice and Paul Tomboulia, **Hazardous Waste Siting Response: A Handbook for Michigan Citizens and Local Governments**, 1983. Available from East Michigan Environmental Action Council, 21220 West 14 Mile Road, Bloomfield Township, MI 48301.

Alice Tomboulia, **Michigan's Hazardous Waste Facility Siting Process, As Revised**, 1988. Available from Metropolitan Affairs Corporation, 1900 Edison Plaza Drive, Detroit, MI 48226.

Time Line: Application Review under Act 451, Part 111

Day

- 30 Applicant publishes public notice prior to application submittal.
- 0 Applicant submits application (or resubmits - see activities at Day 30).
- 30 Michigan Department of Environmental Quality (DEQ) determines if application is administratively complete *or* notifies applicant of administrative/technical deficiencies. If application is complete, DEQ continues technical review. If incomplete, applicant may revise, resubmit, and start process again at Day 0.
- 60 DEQ holds public hearing.
- 75 Public comment period ends; DEQ prepares responsiveness summary. DEQ requests municipality and county to appoint Site Review Board (SRB) members.
- 120 SRB is created and DEQ Director refers application to SRB *or* DEQ notifies applicant of intent to deny permit, and starts public participation process on denial of application.
- 150 SRB meets to review application and establish a timetable.
- 195 SRB holds public hearing to receive comments on the application.
- 210 Public comment period ends. SRB then separates and lists those issues to be addressed through a negotiation process.
SRB holds formal/informal hearings. Formal negotiation process between applicant and affected parties proceeds concurrently, governed by Part 111 of Act 451.
- 300 SRB concludes formal Act 451, Part 111 negotiation process. See *Note*.
- 330 SRB recommends that DEQ approve or reject application.
DEQ initiates public participation process on issuance of draft permit or denial of permit.
- 390 DEQ holds public hearing on draft permit or denial of permit.
- 405 Public comment period ends. DEQ responds to comments and issues or denies the permit, or reconvenes SRB to consider issues raised during public participation process.
- 435 Within 30 days, SRB makes a recommendation and DEQ makes decision on permit.

Note: SRB has legal authority to extend the formal Act 451, Part 111 negotiation process by up to 60 days if so requested by the applicant and at least one local affected party. Under such cases, all dates beyond Day 300 should be adjusted accordingly.

*Adapted from Michigan's Hazardous Waste Facility Siting Process,
As Revised, Metropolitan Affairs Corporation, 1988*